DOCUMENT RESUME

ED 084 357 CE 000 463

AUTHOR	Shapley, Allen E.
TITLE	Clarification of Workmen's Compensation Insurance.
INSTITUTION	Michigan State Univ., East Lansing. Center for Rural Manpower and Public Affairs.
REPORT NO	Special Paper 16
PUB DATE	Oct 73
NOTE	17p.
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Agricultural Laborers; Employer Employee Relationship; *Insurance Programs; *State Laws; *Workmans Compensation
IDENTIFIERS	*Michigan

ABSTRACT

This document attempts to answer questions resulting from the 1972 Michigan Supreme Court Ruling relative to agricultural employees under the Workmen's Compensation Act (WCA). The sections of this paper outline a history of the WCA; employers covered; definition of "regularly employ"; clarification of "thirteen weeks"; employees (minors, partners, spouses, where, when); custom hire contracting; attempts to avoid the law; insurance carrier's obligations; employers protection from other actions by employees; when the law does not apply; cost; unemployment insurance vs. workmen's compensation insurance; employee's claim procedure; employee benefits; compensation rates; and what to do when a controversy arises. (KP)

FILMED FROM BEST AVAILABLE COPY

ED 084357

CENTER FOR RURAL MANPOWER & PUBLIC AFFAIRS

CRAPA

SPECIAL PAPER NO. 16 OCTOBER 1973

RECEIVED
OCT 25 1973
NMSU
E.R.I.C.

CLARIFICATION OF WORKMEN'S COMPENSATION INSURANCE

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

Allen E. Shapley
Department of Agricultural Economics
College of Agriculture and
Natural Resources

MICHIGAN STATE UNIVERSITY
EAST LANSING, MICHIGAN 48823

CE 000 463

TABLE OF CONTENTS

	Page
Foreword	ii
History	1
Employers Covered	1
"Regularly Employ" Defined	2
"13 Weeks" Clarified	3
Employees—Minors, Partners, Spouses	3
Employees—When and Where	4
Contracting, Custom Hire	4
Attempts to Avoid the Law	5
The Insurance Carrier's Obligations	6
Employer's Protection From Other Actions by Employee	7
When the Law Does Not Apply	7
The Cost	8
Unemployment Insurance Vs. Workmen's Compensation Insurance	11
Employee's Claim Procedure	11
Employee Benefits	12
Compensation Rates	13
When A Controversy Arises	14

FOREWORD

The December, 1972 Michigan Supreme Court ruling relative to agricultural employers under the Workmen's Compensation Act has resulted in many questions from farmers, farm employees, and those advising these people. The following information is an attempt to answer some of these questions. If the material herein does not answer your specific questions, please contact the author, or Workmen's Compensation Bureau, Michigan Department of Labor, 300 E. Michigan Avenue, Lansing, Michigan 48926.

CLARIFICATION OF WORKMEN'S COMPENSATION INSURANCE

HISTORY

The Michigan Workmen's Compensation Act was passed in 1912, but it did not cover agriculture. A 1967 amendment brought agriculture under the Act, but in a special way. Agricultural employers were categorized separately from other private employers and their employees were treated differently than employees of all other private businesses. Under that amendment, the law read as follows:

> from Sec. 115 (d) - *This Act shall apply to all agricultural employers of 3 or more regular employees paid hourly wages or salaries, and not paid on a piecework basis, who are employed 35 or more hours per week by that same employer for 13 or more consecutive weeks during the preceding 52 weeks. Coverage shall apply only to such regularly employed employees.*
>
> from Sec. 115 (e) - *All agricultural employers of 1 or more employees who are employed 35 or more hours per week by that same employer for 5 or more consecutive wee's shall provide for such employees--medical and hospital coverage--for all personal injuries arising out of and in the course of employment suffered by such employees not otherwise covered by this Act.*

On December 21, 1972, the Michigan Supreme Court ruled that the special treatment accorded agricultural employers and their employees under the Act was unconstitutional. From that date on, farm employers have been included in the "private employer" category along with all other private employers.

EMPLOYERS COVERED

The law now covers private employers (including farmers) in the following way:

> Sec. 115 (a) - *This Act shall apply to all private employers. . . who regularly employ 3 or more employees at 1 time.*
>
> Sec. 115 (b) - *All private employers. . . who regularly employ less than 3 employees if at least 1 of them has been regularly employed by that same employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks.*

This statement is much more comprehensive than the one that applied before the 1972 Supreme Court ruling. The following points are relative to this "new" law:

a) There is no minimum length of employment when three or more employees are involved. (For interpretation, see "regularly employ defined" below.)

b) There is nothing about "hospital and medical coverage only." If an employee comes under the new law, he has full coverage.

c) There is nothing about consecutive weeks. The law states "13 weeks or longer during the preceding 52 weeks."

d) There is nothing about coverage "applying only to such employees." If one employee works long enough to come under the Act, all other employees of that same employer automatically come under the Act.

e) There is no difference in treatment on the basis of how an employee is paid. Piece rate workers have the same coverage as all other workers.

"REGULARLY EMPLOY" DEFINED

The Act applies to all private employers who regularly employ three or more employees at one time. This statement is, of course, open to interpretation and we won't be absolutely certain how it applies to farm employees until a claim is contested.

There are some facts, however, that can serve as guidelines. In past Workmen's Compensation hearings where this term has been contested, the Appeal Board has ruled that where there is a pattern of employment such that an employer hires three or more workers for a special job and then follows this practice time after time, he is subject to the Act. This decision would suggest that when an employer hires three or more workers for annual harvesting, pruning or cultivating, he would be subject to the Act. Also, the Board has ruled that "part-time" labor constitutes regular employment. Finally, the intent of the Workmen's Compensation Act is to protect the employee.

In the past when cases have come before the Workmen's Compensation Appeal Board, their rulings have reflected this intent.

"13 WEEKS" CLARIFIED

An employer may be required to cover an employee with Workmen's Compensation even though the employee has not worked 13 weeks. Note the following:

a) Past decisions would indicate that the 13 weeks refer to the job and not the employee. Therefore, if an employee is hired as a milker and after 10 weeks, leaves and is replaced by another milker and the second milker is hurt after 4 weeks on the job, he may come under the Act.

b) If an employer hires one full-time regular employee and he has an accident before the 13 weeks is up, he probably would come under the Act because it was the employer's intent to employ him more than 13 weeks.

c) The 13 weeks need not be consecutive and are counted back 52 weeks from the time an accident occurs. For example, if a farmer employs a man for eight weeks during June and July of one year and then employs him again in March of the following year and the employee is hurt after working only five weeks, he is covered by the law.

EMPLOYEES—MINORS, PARTNERS, SPOUSES

The law states:

from Sec. 161 (1b) - *An employee as used in this Act shall mean every person in the service of another, under any contract of hire, express or implied, including aliens, any person regularly employed on a full-time basis by his spouse having specified hours of employment at a specified rate of pay, working members of partnerships receiving therefrom wages irrespective of profits, any person insured for whom and to the extent premiums are paid based on wages, earnings or profits, and minors, who shall be considered the same as and have the same power to contract as adult employees.*

If an employer pays his minor children wages, they are employees under the law. The fact that their employer is also their parent does not exempt them.

A partner or a spouse may be excluded from coverage. The law states:

> Sec. 161 (2) - *Any policy or contract of workmen's compensation insurance, by indorsement, may exclude coverage as to any one or more named partners or the spouse of an employer who is an individual. No such spouse or partner so excluded shall be subject to the provisions of this Act.*

EMPLOYEES--WHEN AND WHERE

A question often arises concerning whether or not an employee is covered when he is not actually toiling. The law states:

> Sec. 301 (2) - *Every employee going to or from his work while on the premises where his work is to be performed, and within a reasonable time before and after his working hours, shall be presumed to be in the course of his employment.*

CONTRACTING, CUSTOM HIRE

A farmer could find himself in a situation in which he would have to pay compensation to an employee of a contractor. The law states:

> from Sec. 171 (1) - *If any employer subject to the provisions of this Act, in this section referred to as the principal, contracts with any other person, in this section referred to as the contractor, who is not subject to this Act or who has not complied with the provisions of section 611,* and who does not become subject to this Act or comply with the provisions of section 611 prior to the date of the injury or death for which claim is made for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him.*
>
> from Sec. 171 (2) - *The principal, in case he pays compensation to the employee of such contractor, may recover the amount so paid in an action against such contractor.*

---

*Sec. 611 describes alternative methods of insuring.

This suggests that before a farmer signs a contract with a contractor, he should ask that contractor to provide him with an official certificate of insurance. Also, if a farmer A custom hires a neighboring farmer B to do a job such as combining, farmer B might be considered an employee of farmer A under the Act. Therefore, a percentage of the amount A pays B may be considered as payroll by an insurance agent and A's premium increased accordingly.

ATTEMPTS TO AVOID THE LAW

Managing a business includes, among other activities, strategies to reduce costs. Some employers would attempt to take actions relative to Workmen's Compensation insurance as one way to do this. Below are a few actions he should not take:

- Written agreement: A statement signed by the worker releasing the employer of obligations is not valid. The law states:

> Sec. 815 - *No agreement by an employee to waive his rights to compensation under this Act shall be valid except that employees or their dependents as defined in section 161,* after injury only, may elect as provided in section 161.*

Some contractors have been known to offer such a statement in lieu of a certificate of Workmen's Compensation insurance. Again, such a statement is not valid.

- Work scheduling: It is illegal to discharge one worker and employ another without a work stoppage if the purpose of the discharge is to evade the Workmen's Compensation law. Such action would make the employer subject to paying Workmen's Compensation benefits himself plus a fine and imprisonment. (See "Ignore the law" below.)

---

*Section 161 is the definition of employee.

- Ignore the law: Some employers, especially those with small payrolls, might be tempted to take a chance that their employees will not be injured and thereby save the premium cost. It's not worth the risk. First of all, it is illegal. The law states:

> from Sec. 641 - *An employer who fails to comply with the provisions of section 611* is guilty of a misdemeanor and shall be fined not less than $10.00 nor more than $100.00, or imprisoned in the county jail for not less than 30 days nor more than 6 months, or both. Each day's failure is a separate offense.*

Second, if an employee were injured or killed, the employer would have to pay all benefits which might amount to several thousand dollars per year for many years.

- Negligence is no defense: An employer might believe that the only way an employee could be injured would be through his own negligence and therefore Workmen's Compensation insurance would not be necessary. Not only would the employer be subject to a fine for noncompliance, but negligence is no defense. The law states:

> Sec. 141 - *In an action to recover damages for personal injury sustained by an employee in the course of his employment or for death resulting from personal injuries so sustained it shall not be a defense:*
>
> *(a) That the employee was negligent, unless it shall appear that such negligence was wilful.*
>
> *(b) That the injury was caused by the negligence of a fellow employee, or*
>
> *(c) That the employee had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.*

THE INSURANCE CARRIER'S OBLIGATIONS

- All businesses and all employees of the employer are covered: An employer often adds an enterprise and/or adds employees during the life of

---

*Section 611 describes alternative methods of insuring.

his policy. He may wonder whether his policy covers these new workers. The law states:

> Sec. 621 (2) - *Scope of contract. (e) That this insurance contract or policy shall for all purposes be held and deemed to cover all the businesses the said employer is engaged in at the time of the issuance of this contract or policy and all other businesses, if any, the employer may engage in during the life thereof, and all employees the employer may employ in any of his businesses during the period covered by this policy.*

If an employer increases his labor force and thereby his payroll during the life of the policy, his premium will be increased as a result of the audit at the time of renewal.

- Carrier pays all costs: The Act spells out the amounts that will be paid to an employee in compensation and benefits. It also goes on to state that:

> Sec. 621 (2) - . . . *the insurer issuing the policy hereby contracts and agrees with the insured employer. (f) That it hereby assumes all obligations imposed upon the employer by his acceptance of the Michigan Workmen's Compensation Act, as far as the payment of compensation, death benefits, medical surgical, hospital care or medicine and rehabilitation service is concerned.*

EMPLOYER'S PROTECTION FROM OTHER ACTIONS BY EMPLOYEE

If an employee who is covered by the law is injured but feels his compensation under the law is not sufficient, he cannot take action against the employer for additional payment. The law states:

> from Sec. 131 - *Where the conditions of liability under this Act exist, the right to the recovery of compensation benefits as provided in this Act shall be the exclusive remedy against the employer.*

WHEN THE LAW DOES NOT APPLY

An employer must provide Workmen's Compensation coverage for his employees if he ". . . regularly employs 3 or more employees at 1 time. . ." or ". . . employs less than 3 if at least 1 of them has been regularly employed by that

same employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks."

Many farmers who employ labor do not have enough employees to meet these minimums. For example, many farmers employ one or two people to help during harvest for two or three weeks, or employ one person for two or three hours per day to help with chores. Such farmers would not be required by law to carry Workmen's Compensation insurance and employees of these farmers would not be protected by the law.

Those employers who do not employ enough labor to come under the Act have three choices: a) Buy Workmen's Compensation insurance; b) Buy Employer's Liability insurance; or c) Buy no insurance. Any employer should choose (a)—buy Workmen's Compensation insurance. There are many situations when it is not entirely clear whether an injured employee qualifies for Workmen's Compensation. If it is ruled that he does and the employer does not have Workmen's Compensation insurance, he may be in serious trouble. However, if he has a Workmen's Compensation policy, all his employees are covered whether they come under the Act or not. If he chooses (b)—employer's liability insurance—the employee has no protection when injured except to sue his employer. Since this insurance has a limited coverage, a serious accident might result in claims well above the limited coverage. The choice of (c)—no insurance—could result in the loss of the farm through payment of a claim from a serious accident.

THE COST

- Rates. The Michigan Workmen's Compensation Rating Bureau has set up a classification system for all employers and has set a maximum premium rate for each class of employers. These rates are reviewed annually and adjusted relative to the claims processed in each class.

The farm classes are listed below along with the present premium rates. A "farm" according to the Workmen's Compensation Bureau shall include stock, dairy, poultry, fruit, fur-bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

Table 1 -- Michigan Workmen's Compensation Insurance Premium Rates Per $100 of Payroll, Set December 1, 1972

Farm Classifications	Rate 12-1-72
Dairy or Livestock Farms--All employees other than inservants--including drivers[a]	8.47
Farm Machinery Operation--By Contractors--including drivers.	7.38
Farm--Market or Truck[b]	3.54
Farms--No Other Category--including drivers[c]	6.72
Florists--Cultivating or Gardening--including drivers.	2.29
Fruit Packing and Handling--including drivers.	3.09
Nurserymen--including incidental landscape gardening, drivers	3.54
Orchards--All employees other than inservants--including drivers.	7.23
Poultry or Egg Producers, Hatcheries--No farming operations--including drivers.	4.50
Stables or Breeding Farms--Training of race horses, polo ponies and horses for exhibition purposes--including jockeys, trainers, drivers	7.03
Tree Pruning, Spraying, Repairing, Trimming or Fumigating--including drivers	8.02
Vegetable Packing and Handling--including drivers.	4.38

[a]Applies to all acreage devoted to producing milk or cream and shall also include the raising of cattle, hogs, cattle feeders, hog feeders, sheep and goats.

[b]Applies to all garden vegetable crops and shall also include acreage devoted to potatoes, dry peas, dry beans, sugar beets, berries, flower and vegetable seed, cucumbers, and all grapes (table, wine, or raisin).

[c]Applies to all acreage devoted to raising hay, alfalfa, all the cereal grains such as wheat, barley, rice, corn and oats, all sorghums, flax and maize.

Source: Michigan Workmen's Compensation Rating Bureau.

- Payroll Division. If an employer falls in two or more classes and keeps good payroll records, the insurance company will charge the appropriate rates. For example, if an employer has a large orchard business and also operates a fruit packing and handling operation and is able to segregate the payroll between the two, the insurance company will charge $7.23 per $100 payroll paid to employees in the orchard and $3.09 per $100 payroll paid to employees in the fruit packing shed. However, if the payroll records do not show accurate segregation by classification, the entire payroll will be segregated on the basis of proportionate acreages.

- Incidental Labor. The payroll for labor required to maintain the buildings and equipment within a specific classification will be charged at that classification rate.

The payroll for labor to maintain animals for family use, to care for a family garden, or raise crops to maintain work animals on the farm shall be considered usual and incidental to the operation of the farm.

The payroll for general supervision, household domestics, choremen, chauffeurs not connected with any particular crop, fence repair and road building is incidental to any type of farm.

- Minimum Premium. An insurance company has the right to charge a minimum premium to cover their overhead costs. This minimum varies by farm class and is 25 times the rate per $100 of payroll plus $30 for "loss and expense constants." If, for example, a dairyman's payroll is less than $2500, his premium would be about $240 ($8.47 X 25 + $30). If his payroll exceeds that amount, his premium would increase by $8.47 for every $100 increase in payroll.

- The Farm's Claim History. If an employer has a relatively small payroll and an average or better safety record, his premium will reflect the rates in Table 1. If he has had a very high claims record (many employees injured in

the past), a company may refuse to carry him and he would be put in an insurance pool.

If an employer has a payroll that results in an average annual premium of $750 or more, he is eligible for an "experience rating." This means that if he has a good safety record his premium will be lowered accordingly.

UNEMPLOYMENT INSURANCE VS. WORKMEN'S COMPENSATION INSURANCE

Many employers confuse these two types of insurance. Unemployment insurance provides an employee with a wage for a period of time after he has lost his job. Workmen's Compensation insurance provides an employee with compensation for medical bills and lost time due to an injury on the job. At this time, agriculture is exempt from the unemployment insurance law.

EMPLOYEE'S CLAIM PROCEDURE

When an employee is injured, he must give notice to his employer who in turn must see that the employee receives reasonable medical treatment. In this regard, the law states:

> from Sec. 381 (1) - *No proceedings for compensation for an injury under this Act shall be maintained, unless a notice of the injury has been given to the employer within 3 months after the happening thereof and unless the claim for compensation with respect to the injury, which claim may be either oral or in writing, has been made within 6 months after the occurrence of the same; or in case of the death of the employee, within 12 months after death; or in the event of his physical or mental incapacity, within the first 6 months during which the injured employee is not physically or mentally incapacitated from making a claim.*

and that upon notice of an injury:

> from Sec. 315 - *The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of his employment, reasonable medical, surgical and hospital services and medicines or other attendance or treatment recognized by the laws of this state as legal, when they are needed.*

EMPLOYEE BENEFITS

The parts of the Act dealing with employee benefits are many, lengthy, and complex. The benefits depend on the extent of the injury, the employee's wage at the time of the injury, the degree and length of disability, the number of dependents the employee has, and in some incidents the employee's age. It would be impractical to attempt detailed coverage of all these points here; instead, only the major ones will be discussed. If an employee is seriously injured, it would be to his benefit to request a copy of the Act from the Workmen's Compensation Bureau, Department of Labor, 300 E. Michigan Avenue, Lansing, Michigan 48926.

In general, costs covered and compensation paid are as follows.

When an employee is injured, all reasonable medical costs are covered. If he is unable to work for a period exceeding one week, compensation will begin on the eighth day after the injury. If incapacity continues for two weeks or longer or if death results from the injury, compensation shall be computed from the date of the injury. If the injury results in a need for rehabilitation and/or prosthetics, these costs are covered. If an employee is killed or dies as a result of injury, funeral expenses are paid and support payments made to his dependents. If the employee is partially disabled and can only work part-time, he will receive compensation based on the difference between his wages before the injury and the wages he is able to earn thereafter. Some partially disabling injuries result in a compensation of two-thirds of the average weekly wages (within a minimum-maximum range) to be paid for specific periods of time. Examples include loss of a thumb which merits 65 weeks payment, and the little finger which merits only 16 weeks. Loss of an arm merits 269 weeks.

Some injuries are defined as being total and permanent disabilities. The Act lists a number of such injuries, but examples include: a) total

and permanent loss of sight of both eyes, and b) loss of both legs or both feet at or above the ankle.

COMPENSATION RATES

Each year the compensation rates are reviewed and changed if deemed necessary. Presently the rates are as follows:

(1) Total disability - Compensation payable equal to 66 2/3 percent of average weekly wage from date of injury, subject to the following maximums and minimums (see columns 2 and 3 in Table 2 below).

(2) Permanent and total disability - Same rate as total disability but for a period of 800 weeks. At the end of 800 weeks, payments may be continued under certain circumstances (see columns 2 and 3 in Table 2 below).

(3) Death - Widows will receive weekly compensation of 66 2/3 of the average weekly wage for 500 weeks from the date of death. Other dependents will receive compensation until 21 and possibly longer if mentally or physically handicapped (see columns 4 and 5 in Table 2 below). In addition, $1,500 will be paid for burial expenses.

Table 2 — Weekly Workmen's Compensation Rates From 1/1/73 to . . . .

Number of Dependents	Total Disability		Death	
	Minimum	Maximum	Minimum	Maximum
0	$27	$ 93	—	—
1	30	98	$27	$ 93
2	33	104	30	98
3	36	110	33	104
4	39	116	36	110
5 or more	42	122	39	116

WHEN A CONTROVERSY ARISES

The employee, employer, or insurer can contact the Workmen's Compensation Bureau if there is a controversy over compensation. The law states:

> Sec. 841 - *Any controversy concerning compensation shall be submitted to the Bureau and all questions arising under this Act shall be determined by the Bureau. The director shall be deemed to be an interested party in all workmen's compensation cases in questions of law.*

It further states:

> Sec. 847 - *Upon the filing with the Bureau by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the director shall set the case for hearing and shall designate a hearing referee to hear the case.*